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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on Universal Service	)	
	)	CC Docket No. 96-262
Access Charge Reform	)	
	)	CC Docket No. 94-1
Price Cap Performance Review for Local Exchange Carriers	)	
	)	CC Docket No. 91-213
Transport Rate Structure	)	
	)	CC Docket No. 95-72
End User Common Line Charges	)	

MCI'S OPPOSITION TO THE RURAL TELEPHONE COMPANIES' JOINT EMERGENCY MOTION FOR PARTIAL STAY

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SUMMARY

Movants offer no legitimate reason to stay implementation of the Universal Service Order. They identify no legal issue on which they are likely to prevail. Moreover, there is no serious risk of irreparable injury. The Commission provided rural telephone companies with a generous transition plan that will remain in effect throughout the pendency of the appeal. Moreover, any stay would harm the public by creating impediments to the development of local competition.

Movants' "takings" claim is flawed on several independent bases. The argument is predicated entirely on the notion that a constitutional taking would occur from any Commission action reducing rural companies' rate of return below 11.25 percent. Takings analysis, however, does not restrict the Commission's discretion unless the overall consequences of its action would "jeopardize the financial integrity of the compan[y], either by leaving [it] insufficient operating capital or by impeding [its] ability to raise future capital." Duquesne Light Co. v. Barasch, 488 U.S. 299, 312 (1989). Movants have not attempted to make such a showing here.

Moreover, nothing in the Constitution or the 1996 Act guarantees rural carriers recovery of all their historical costs. Both permit the Commission to base ratemaking decisions on the *"actual present value"* of assets employed in the public service. Duquesne Light Co., 488 U.S. at 308.

Accordingly, there is no merit to movants' claim they relied on Commission assurances that rural carriers would recover all their historical costs. No such assurances were -- or lawfully could have been -- made.

In any event, rural carriers will not suffer any adverse impact from the Universal Service Order. Given the Commission's transition plan, those carriers will suffer revenue reductions only to the extent they lose customers to CLECs. Any such losses are likely to be minor during the pendency of their appeal. Moreover, such losses are necessary and appropriate to ensure fair competition in rural local service markets.

Movants have no legitimate claim that the Universal Service Order is arbitrary and capricious. DEM weighting payments are an implicit subsidy within the meaning of the Telecommunications Act. As such, they must be funded in the manner chosen by the Commission. The Commission acted reasonably in capping corporate operations expenses and holding that universal service support should not change depending on the rural or non-rural charater of the purchaser of an exchange. Movants have not shown any violation of the Regulatory Flexibility Act.

Finally, movants have not demonstrated that they will be irreparably harmed in the absence of a stay pending appeal. Given the care taken by the Commission to shield rural carriers from dislocation as a result of the Universal

Service Order, it is unlikely movants will experience any adverse consequences. Any injuries that do occur will be minor and can easily be remedied in the unlikely event that appellate action makes such a remedy necessary.

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MCI'S OPPOSITION TO THE RURAL TELEPHONE COMPANIES' JOINT EMERGENCY MOTION FOR PARTIAL STAY

MCI Telecommunications Corporation ("MCI") respectfully opposes the Rural Telephone Companies' motion for a partial stay of the Commission's Report and Order entitled Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1997) ("Universal Service Order"). The national goal of opening "all telecommunications markets to competition"[1] depends on the Commission's efforts to establish explicit and competitively neutral mechanisms to fund universal service. Movants offer no legitimate basis to delay this first step in that process.

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[1] Universal Service Order ¶ 4.

BACKGROUND

Section 254 of the Act requires the Commission, acting with the States, to ensure that "[c]onsumers in all regions of the Nation, including . . . those in rural, insular, and high cost areas . . . have access to telecommunications and information services . . . at rates that are reasonably comparable to rates charged for similar services in urban areas." Federal support for this purpose "should be explicit" and must be funded through equitable contributions from every carrier offering "interstate telecommunications services."[2]

The Commission's Universal Service Order found that universal service support should be based on the "forward looking economic costs of providing the supported services. . . ."[3] The Commission was concerned, however, that rural carriers might need more time to adjust to changes in the support mechanisms. Accordingly, support for rural carriers will continue to be computed via existing mechanisms (with minor modifications) while the

[2]47 U.S.C. § 254(d)-(e).

[3]Universal Service Order ¶¶ 200, 291.

Commission considers how to move these carriers to a forward-looking methodology.[4]

With respect to DEM Weighting Support, for example, the Commission found that rural carriers should continue to receive the full level of support they have enjoyed in the past. The only change worked by the Universal Service Order is that the "weighted" portion of DEM cost recovery will be funded by the Universal Service Fund instead of being treated as an interstate cost recovered through access charges.[5] Thus, rural carriers will enjoy transitional DEM support that exceeds the forward-looking levels found appropriate by the Commission.

The Commission recognized that transitional universal support for rural customers could adversely impact the development of local competition in these areas. ILECs would enjoy an artificial competitive advantage if they received support based on existing mechanisms while CLECs received a different level of support based on a forward-looking cost methodology.[6] Accordingly, the Commission found that support should be "portable" in the

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[4]Id. ¶¶ 291-325.

[5]Id. ¶¶ 303-304.

[6]Id. ¶¶ 311-313.

sense that a CLEC should receive the same level of support for its rural lines as the ILEC serving that area.[7]

Finally, the Commission acted to limit the growth of high-cost support for "corporate operations expense."[8] These cost items are not properly recoverable through universal support mechanisms because "costs not directly related to the provision of subscriber loops are not necessary for the provision of universal service."[9] Indeed, the Commission found that the costs in question are not "inherent in providing telecommunications services, but rather result from managerial priorities and discretionary spending."[10] Nevertheless, the Commission allowed universal service support for these discretionary costs within a "range of reasonableness" of up to 115 percent of the average corporate operations expense for a carrier of similar size.[11]

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[7] Id. ¶ 313.

[8] Id. ¶¶ 283-85, 307.

[9] Id. ¶ 283.

[10] Id.

[11] Id. ¶307. See also Order on Reconsideration, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-246 (rel. July 10, 1997) (modifying formula for reaching 115 percent cap for certain carriers).

ARGUMENT

A request for a stay of an agency order pending review is a request for extraordinary relief, and the movants bear the burden of proving that such relief is warranted. See, e.g., Baker Elec. Co-op., Inc. v. Chaske, 28 F.3d 1466, 1472 (8th Cir. 1994); Reynolds Metals Co. v. FERC, 777 F.2d 760, 762 (D.C. Cir. 1985). Under the familiar four-factored standard, the Commission considers (1) the likelihood that movants will prevail on the merits; (2) the likelihood that the movants will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the Commission grants the stay; and (4) the public interest in granting the stay. Iowa Util. Bd. v. FCC, 109 F.3d 418, 423 (8th Cir. 1996); Wisconsin Gas Co. v. FERC, 758 F.2d 669, 673-74 (D.C. Cir. 1985).

In this case, the movants' request for a stay founders at all four points. Movants' challenges are meritless, and the balance of equities clearly favors denying the stay. The Commission took great care to ensure that its Universal Service Order would not work a hardship on rural carriers. Far from working an irreparable injury, the Commission's transition provides these companies with generous support that is not based on their true economic cost of providing service. It is clear from their filing that movants fail to recognize that Congress intended the universal service system to benefit consumers, not particular companies. Therefore, the Commission should decline to grant the requested stay.

I. MOVANTS' "TAKING" CLAIM IS FRIVOLOUS FOR SEVERAL INDEPENDENT REASONS.

Movants argue that the Universal Service Order will effect a taking because it will prevent them from earning an 11.25% rate of return on their booked costs.[12] There are several flaws in their argument, each of which would independently justify dismissal of movants' takings claim. Indeed, whether or not movants' underlying factual allegations are true, the FCC can and should simply dismiss the petition on the ground that it fails as a matter of law even to allege a viable takings claim.

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[12]Movants also allege that the Universal Service Order will "reduce the annual interstate rates-of-return for several Rural Telephone Carriers to negative amounts" for a few, unnamed carriers. Motion at 26. For the reasons outlined infra pp. 3-6 (explaining why calculations based upon historical costs cannot be used to establish a taking) and 8-9 (explaining that movants have not demonstrated that their losses, if any, have not been offset by profits elsewhere), this allegation is not enough to resuscitate movants' takings claim.

A. Movants Are Not Constitutionally Entitled to Receive a Particular Rate of Return.

The first error in movants' argument is their claim that the Universal Service Order will effect a taking because it "will prevent the Rural Telephone Companies" from reaping a return equal to the "annual 11.25% fair rate of return on interstate investment set by the Commission." Motion at 26. Movants reach this novel conclusion by misreading applicable Supreme Court precedent. According to movants, Federal Power Comm'n v. Hope Natural Gas, 320 U.S. 591, 602 (1944), establishes that "[a] rate is considered 'confiscatory' if it is not 'just and reasonable.'" Motion at 6. Since the FCC has concluded that an 11.25% rate of return is "just and reasonable," movants reason, then any rate of return that falls below that number must be a taking. Motion at 6-7.

Neither Hope Natural Gas nor any other Supreme Court case, however, suggests that the rate of return that the FCC has deemed to be "just and reasonable" represents the constitutional minimum and that any rate of return that falls below that number is therefore confiscatory. What these cases do say is that the lowest rate that an agency can set under the "just and reasonable" statutory standard is one that is nonconfiscatory. FPC v. Natural Gas Pipeline Co., 315 U.S. 575, 585 (1942) ("By longstanding usage in the field of rate regulation the 'lowest reasonable rate' is one which is not confiscatory in the constitutional sense"); see also Permian Basin Area Rate Cases, 390 U.S. 747, 770 (1968); Illinois Bell Tel. Co. v. FCC, 988 F.2d 1254, 1260 (D.C. Cir. 1993). An agency, of course, is free to set "just and reasonable" rates well above the lowest possible nonconfiscatory rate. Northwestern Public Serv. Co. v. Montana-Dakota Utilities Co., 341 U.S. 246, 251 (1950) ("Statutory reasonableness is an abstract quality represented by an area rather than a pinpoint. . . . To reduce the abstract concept of reasonableness to concrete expression in dollars and cents is the function of the Commission."). It is thus absurd to contend that whatever rate an agency deems to be "just and reasonable" during a particular time period represents a constitutional floor.

Even if the Universal Service Order caused movants to receive a rate of return that was considerably less than 11.25%, there would be no taking. As the Court held in Hope Natural Gas, the only case on which movants rely in making their novel takings argument, "'regulation does not insure that the [regulated] business shall produce net revenues.'" Hope Natural Gas, 320 U.S. at 603 (quoting Natural Gas Pipeline, 315 U.S. at 590); see also id. at 601 ("[t]he fact that the value is reduced does not mean that the regulation is invalid"); Market St. Ry. Co. v. Railroad Comm'n, 324 U.S. 548, 566 (1945) ("regulation does not assure that the regulated business make a profit"); Permian Basin Area Rate Cases, 390 U.S. at 769 ("[r]egulation may, consistently with the Constitution, limit stringently the return recovered on investment"). Thus, any takings claim premised upon entitlement to a guaranteed profit -- let alone a takings claim premised upon entitlement to an 11.25% rate of return -- must fail.

The correct standard for assessing whether a takings has been effected is whether the "overall impact of the rate order[] . . . jeopardize[s] the financial integrity of the compan[y], either by leaving [it] insufficient operating capital or by impeding [its] ability to raise future capital." Duquesne Light Co. v. Barasch, 488 U.S. 299, 312 (1989).[13] Movants cannot meet this stringent standard merely by alleging that their interstate access revenues will decrease. See Motion at 27 (alleging that "a loss between 8.24% and 38.26% of total annual interstate average schedule settlements" establishes a taking). Thus, at least to the extent that movants argument is premised upon the notion that any

[13]In assessing the financial impact of regulatory action, moreover, it is necessary to consider whether the "overall impact of the rate order[] . . . jeopardize[s] the financial integrity of the compan[y]." Duquesne Light Co., 488 U.S. at 312 (emphasis added). Thus, movants could demonstrate a taking only by showing that the Universal Service Order threatened the viability of their entire business, taking into account all inter- and intrastate operations and all lines of business. Movants have not even attempted to make such a showing.

reduction in their rates of return results in a taking, their claim should be dismissed out of hand.

B. Movants Are Not Entitled to Recover All Historical Costs.

A second flaw permeates movants' argument and requires denial of their motion for a stay. Movants calculate their "rate of return" based upon their "booked costs." Indeed, movants' entire takings argument hinges upon the assumption that they are entitled to "recovery of these booked costs." Motion at 7, 26 (alleging that provisions of the Universal Service Order will "take away interstate revenues currently used to recover booked costs"). Movants' assumption is plainly misplaced.

The rural carriers' assertion that they are constitutionally entitled to recovery of all of their historical costs -- and that their rate of return must be set based upon their historical costs[14] -- flies in the face of decades of Supreme Court precedent. Indeed, one need look no further than Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989), one of the two cases on which movants rely, to

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[14]At least since the turn of the century, regulatory commissions have employed two basic systems for setting rates -- the historical cost approach and the "fair value" approach. See generally Alfred E. Kahn, The Economics of Regulation 35-41 (1988); Richard J. Pierce, Jr., "Public Utility Regulatory Takings: Should the Judiciary Attempt to Police the Political Institutions?," 77 Geo. L.J. 2031, 2031 n. 5 (1989). Under the former, utilities receive a fair return on the actual amount of their prudent investments. Under the latter, they receive a fair return on the present value of their assets.

confirm that regulated carriers are not entitled to recovery of all historical costs. In Duquesne, the Supreme Court considered and dismissed a takings claim challenging the decision of a state regulatory agency to deny a regulated company the opportunity to recover substantial investments which were "prudent and reasonable when made" on the ground that they were no longer "used and useful in service to the public" -- that is, on the ground that they held no present value for consumers. Id. at 301. In doing so, the Court concluded that it was perfectly appropriate for rates to be set based upon the "actual present value of the assets employed in the public service" rather than upon their historical costs. Id. at 308. Further, the Supreme Court specifically rejected the argument, made by the movants here, that the Constitution mandates recovery of all historical costs or rates based upon historical costs. See id. at 315-16.

Indeed, for decades the Supreme Court has consistently upheld decisions to deny regulated companies recovery of all historical costs.[15] For example, in Market St. Ry. Co. v. Railroad Comm'n, the Supreme Court upheld a decision to set a rate of return based upon a the $7.95 million present

[15] See, e.g., Wisconsin v. Federal Power Comm'n, 373 U.S. 294, 309 (1963) (rejecting argument that "prudent investment, original cost [ratesetting] method" is "sine qua non" of rate regulation); Denver Union Stock Yard Co. v. United States, 394 U.S. 470, 475 (1938) (holding that company is constitutionally entitled to reimbursement only for property "used and useful" at the time); Galveston Elec. Co. v. Galveston, 258 U.S. 388, 395 (1922) (no taking as long as rate is based on "present reproduction value" of asset).

value of a regulated company's assets even though the "book value" of the property exceeded $41 million and the "historical reproduction cost" of the assets exceeded $25 million. 324 U.S. at 564-67. The Court affirmed the agency's decision to calculate the regulated company's rate of return based upon its present, rather than historical, value — thereby denying it recovery of all historical costs — on the ground that

> [T]he due process clause has never been held by this Court to require a commission to fix rates . . . on the historical valuation of a property whose history and current financial statements showed the value no longer to exist, or on an investment after it has vanished, even if once prudently made . . . . The due process clause has been applied to prevent governmental destruction of existing economic values. It has not and cannot be applied to insure values or to restore values that have been lost by the operation of economic forces.

Id. at 567.[16]

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[16]Even when agencies set rates based upon the historical cost rather than the present value of the assets devoted to public service, only prudently incurred investments may be recouped. Duquesne Light Co., 488 U.S. at 309. Indeed, courts and agencies have further limited regulated utilities' recovery of historical costs to those that hold some present value to consumers. See, e.g., Natural Gas Pipeline Co. v. FERC, 765 F.2d 1155, 1157, 1163-64. As the D.C. Circuit has observed, "'Justice Brandeis' formula for ascertaining the rate base -- the amount of capital prudently invested -- was not to become the prevailing rule.' The general rule . . . is that expenditure of an item may be included in a public utility's rate base only when the item is 'used and useful' in providing service; that is, current rate payers should bear only legitimate costs of providing service to them." NEPCO Mun. Rate Comm. v. FERC, 668 F.2d 1327, 1333 (D.C. Cir. 1981) (citations omitted), cert. denied, 457 U.S. 1117 (1982).

By their own admission, the only evidence movants have produced to establish their losses are calculations based upon their "historical" or "book" costs. Indeed, the very premise of their takings claim is that in order "to achieve a fair rate of return on their investments," rural telephone companies must "recover their booked costs." Given that the Supreme Court has long held that no regulated company is entitled to recovery of all historical costs or rates of return based upon book costs, the evidence produced by movants -- even the evidence allegedly demonstrating that some carriers will receive "negative" interstate revenues on their book costs, Motion at 26 -- cannot be used to establish a takings claim. See Id. at 567 ("The owners of a property dedicated to the public service cannot be said to suffer injury if a rate is fixed . . . which probably will produce a fair return on the present fair value of their property.").

C. Movants Are Not Entitled to Maintenance of the Regulatory Status Quo.

Movants attempt to buttress their constitutional argument by asserting that "the Rural Telephone Companies have made significant capital investments . . . in reliance on their ability to" recover their booked costs. Motion at 7. Thus, movants imply that their investments were based upon some specific promise or guarantee that the Universal Service Order is now abrogating. Movants' reliance argument is as flawed as their other takings arguments.

As a purely factual matter, movants could not have relied upon a guarantee that they would recover all historical costs when making their investments because no such promise was ever made. As the FCC has observed, any claim by an incumbent telephone company to guaranteed recovery of all historical costs "would exceed the assurances that we or the states have provided [to the ILECs] in the past." In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, FCC 96-325, slip op. ¶ 706 (rel. Aug. 8, 1996).

Movants' reliance argument is also foreclosed as a matter of law. The Supreme Court has held for decades that regulated companies are not entitled to recovery of all historical costs. See Duquesne Light Co., 488 U.S. at 312-314 (concluding that requiring agencies to set rates based upon historical costs would "signal a retreat from 45 years of decisional law in this area").

When movants' reliance argument is analyzed against this factual and legal backdrop, it is clear that there is simply no basis for the movants to claim that they "relied" on some promise or assurance given by the states that they would be guaranteed recovery of all historical costs. Movants have not pointed to any such promise in their filings, and decades of Supreme Court precedent refute its existence. Nor can movants claim that they are constitutionally entitled to maintenance of the regulatory status quo. The relationship between the ILECs and the government is a regulatory, not a contractual, relationship, and as such does not grant them a vested right in the maintenance of a particular regulatory scheme.[17] Indeed, even if movants could produce a written contract explicitly outlining the "guarantee" on which movants allegedly relied, the courts have long eschewed contractual agreements which "bind [the government] to ossify the law" and thus restrict the future exercise of legislative power. United States v. Winstar Corp., 116 S. Ct. 2432, 2453-56 (1996) (plurality opinion) (surveying doctrines precluding agreements to limit the legislature's power to change law).

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[17]See Tennessee Elec. Power Co. v. Tennessee Valley Authority, 306 U.S. 118, 141 (1939) ("[t]he declaration of a specific policy creates no vested right to its maintenance in utilities then engaged in the business or thereafter embarking in it"); American Trucking Ass'n v. Atchison, Topeka and Santa Fe Ry. Co., 387 U.S. 397, 416 (1967) (agencies "are neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday"); New York Cent. R.R. v. White, 243 U.S. 188, 198 (1917) ("No person has a vested interest in any rule of law entitling him to insist that it will remain unchanged for his benefit"); Rogers Truckline v. United States, 14 Cl. Ct. 108, 110-12 (1987) (a regulated carrier has no constitutionally protected property interest in an existing regulatory scheme); General Tel. Co. of the Southwest v. United States, 449 F.2d 846, 864 (5th Cir. 1971) ("[t]he property of regulated industries is held subject to such limitations as may reasonably be imposed upon it in the public interest and the courts have frequently recognized that new rules may abolish or modify pre-existing interests").

D. In Any Event, the Commission Has Taken Great Care to Shield Rural Companies from Adverse Impacts of the Universal Service Order.

As shown above, movants would not establish a constitutional takings claim even if they were able to demonstrate that the Universal Service Order threatened serious financial consequences for rural carriers. In fact, however, no such threat exists. In order to guard against such consequences, the Commission has afforded rural telephone companies years of subsidies that exceed those that could be justified by proper economic analysis.

The Universal Service Order provides that rural companies will continue to receive support derived from the existing high cost, DEM, and long-term support mechanisms. This support will continue until the Commission devises a forward-looking cost methodology for rural companies and a plan for transitioning to that new methodology. For the next several years, then, rural telephone companies will continue to receive universal service support at substantially the levels they currently enjoy.

Movants complain that CLECs will receive DEM weighted support based on the same support methodologies to the extent that they win customers away from rural ILECs. Motion at 7-8. But this is a necessary consequence of the generous transition rules the Commission adopted for rural companies. As the Commission observed, it would unfairly skew competition to afford ILECs with subsidies based on the existing methods but limit CLECs to smaller, forward-looking compensation when they serve the very same customers.

Nor is it significant that this order does not guarantee ILEC full recovery of their booked costs. Cf. Motion at 8-9. The Commission allowed rural carriers to continue using existing support mechanisms for the immediate future as a *transitional* device, not based on a finding that rural ILECs were entitled to universal service support computed based upon booked costs. To the contrary, the Commission has ruled that rural carriers should (like all other carriers) eventually receive universal service support on a forward-looking cost basis. The Commission should not allow movants to transform a limited (although generous) transition device into an entitlement to recovery of booked costs through the universal service fund.

The Commission has announced its intention to take up the issue of ILEC recovery of historic costs in a future proceeding in the Access Charge Reform docket.[18] Even if movants were able to demonstrate some entitlement to recovery of booked costs (and MCI does not believe they can) they still would face no irreparable injury in this proceeding. If there is any basis to

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[18] In re Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges, FCC 97-158, slip op. ¶ 14 ("Access Charge Order").

recover booked costs, movants may establish it in the regulatory proceeding dedicated to that question.

Movants also complain that the limit on support for corporate operations expenses will reduce their revenues. Motion at 10-11. However, movants offer nothing to rebut the Commission's finding that these costs are discretionary and not inherent to the provision of universal service.[19] Accordingly, the limit on *universal service* support for these costs is plainly appropriate.

In sum, movants' effort to justify a stay on the basis of a "takings" argument is flawed both legally and factually. Nothing in the Constitution forbids the Commission from establishing a reasonable, forward-looking universal service support system. The order challenged here takes a first step in that direction. Indeed, the transition plan for rural carriers goes further, providing years of assistance not justified by the proper forward-looking methodology. Far from a "taking," the order is extremely generous to rural carriers.

[19]See supra note 10 and accompanying text.

II. MOVANTS HAVE NOT DEMONSTRATED THAT THEY WILL SUCCEED IN CHALLENGING THE ORDER AS ARBITRARY AND CAPRICIOUS.

Movants assert three respects in which they will challenge the Universal Service Order as arbitrary. None presents a basis for staying the Commission's order.

A. DEM Weighting Is an Implicit Subsidy that Must Be Provided through the Universal Service Fund.

First, movants argue that it is arbitrary to treat DEM weighting payments as "subsidy" and to recover them through the Universal Service Fund. Motion at 12-15. Because DEM weighting payments are allegedly compensation for switching costs incurred to provide interstate access services, movants argue, they should be recovered through access charges. Id.

Movants misunderstand the Act. Even if DEM weighting does compensate small carriers for real costs incurred in providing access, they still constitute an implicit "subsidy" within the meaning of Section 254. See Federal-State Joint Board on Universal Service, 12 FCC Rcd. 87, 187 (1996) (DEM weighting is a "universal service subsidy mechanism). That is, they are payments embedded in switched access charges and designed to ensure that local customers in "high cost areas" "have access to telecommunications and information services . . . at rates that are reasonably comparable to rates charged for similar services in urban areas." They do so by increasing the compensation small carriers receive for providing interstate access over that received by other ILECs. This permits the small ILECs to recover less of their costs from local rates.

Because DEM weighting payments are Section 254 subsidies, Congress has specifically directed that they be funded "on an equitable and nondiscriminatory basis" by "[e]very telecommunications carrier that provides interstate telecommunications services." Section 254(d).

In any event, movants have failed to explain how *they* might be irreparably harmed by having DEM weighting costs recovered from the Universal Service Fund instead of access charges. Indeed, movants do not even allege that they foresee making *any* payments to the interstate fund, much less ones that might constitute an irreparable injury.

B. The Commission's Decision to Cap Corporate Operations Expense Was Based on the Discretionary Nature of these Costs.

Movants argue that it was arbitrary to limit high-cost payments for "corporate operations expenses" because the Commission relied upon unreliable data in determining the "range of reasonableness" for such charges. Motion at 15-17. The Commission's stated basis for limiting recovery of these costs,